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CHANDIGARH ADMINISTRATION

EDUCATION DEPARTMENT

Notification

The 5th June, 2020

No. DSE-UT-A4-24(8)2013-I(AD9).—In exercise of the powers conferred under section 3 of "The Punjab Regulation of Fee of Unaided Educational Institution Act 2016" (Punjab Act No.47 of 2016) as extended to Union Territory, Chandigarh by the Government of India, Ministry of Home Affairs, New Delhi *vide* notification dated 13th April, 2018, the Administrator, Union Territory, Chandigarh is pleased to extend the tenure of Regulatory Body for Regulation Fee of Unaided Educational Institutions in the Union Territory, Chandigarh constituted *vide* notification No. DSE-UT-A4-24(8)2013, dated 25.9.2018 to exercise the powers conferred upon and perform the functions assigned to it under this Act, which shall consist of the following :—

- | | | | |
|-----|---|----|------------------|
| (a) | Education Secretary,
Chandigarh Administration | .. | Chairperson |
| (b) | Director, School Education,
Chandigarh Administration | .. | Member Secretary |
| (c) | Deputy Director, School Education,
Education Department, Chandigarh Administration | .. | Member |
| (d) | District Education Officer,
Chandigarh Administration | .. | Member |
| (e) | Mrs. Seema Sharma,
Assistant Controller(F&A),
Education Department,
Chandigarh Administration. | .. | Nominated Member |
| (f) | Prof. Krishan Kumar, Ex-Director,
NCERT, H.No. 114 (first floor),
Sector-36A, Chandigarh | .. | Nominated Member |
| (g) | Sh. Shiv Kumar Sharma,
Ex-Assistant Director,
Education Department, UT, Chandigarh
(House No. 2260, Sector-19, Chandigarh) | .. | Nominated Member |

The term of the said Body will be five years from the date of issue.

ARUN KUMAR GUPTA, IAS,
Principal Secretary Education,
Chandigarh Administration.

Chandigarh :
The 21st May, 2020.

(657)

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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 19th March, 2020

No. 13/1/9744-HII(2)-2020/4858.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 24/2016, dated 29.01.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

KARUN KUMAR, S/O SHRI OM PARKASH, R/O HOUSE NO. 4541/B, MIG SUPER, SECTOR 70, MOHALI (Workman).

AND

1. BOARD OF AYURVEDIC UNANI SYSTEM FOR MEDICINE, PUNJAB THROUGH ITS CHAIRMAN, S.C.O NO. 182, SECTOR 38-D, CHANDIGARH.
2. CHAIRMAN, BOARD OF AYURVEDIC UNANI SYSTEM FOR MEDICINE, PUNJAB THROUGH ITS CHAIRMAN, S.C.O NO. 18, SECTOR 38-D, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed as Clerk after due process of selection with effect from 19.06.2011 at the rate ₹ 6,100/- per month and was attached with the Principal Secretary. His services were terminated on a false & frivolous charges that he had poured pressure on the Vice-Chairman to regularise his services. Last extension was given for one year with effect from the date of joining *vide* letter dated 05.06.2013 but his services were terminated with effect from 19.02.2014 without conducting inquiry into the alleged charges. Order of his termination are stigmatic without offering any opportunity, charge sheet, inquiry etc. He had put in more than 240 days of service in each completed year preceding the date of his illegal termination. The work which the workman was performing was of continuous nature but by giving periodical appointments given to him from time to time is an unfair labour practices. The management has violated the provisions of Section 25-F of the ID Act. The workman had also filed the appeal against the order of termination which was rejected without recording reason / cogent reasons. He had tried his best to secure the employment after termination elsewhere but is still facing unemployment till date. The workman was drawing ₹ 13,500/- per month on the date of his illegal termination. Ultimately, it is prayed that the workman be reinstated in service with full back wages.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the office of the Board of Ayurvedic & Unani Systems of Medicine did not fall under the definition of 'industry' as defined under Section 2(j) of the ID Act. Shri Karun Kumar is also not covered under the definition of 'workman' as he is not performing any skilled, manual or technical operation in any industry. On merits, it is pleaded that Shri Karun Kumar had un-authorisedly dropped at the clinic of Vice-Chairman, misbehaved and pressurized the Vice-Chairman to make him a regular employee. The Vice-Chairman gave a complaint to the Chairman orally and in writing regarding the misbehaviour by Shri Karun Kumar. The complaint was discussed in the Board meeting on 09.01.2014 and it was finalized that a show cause notice be issued to Shri Karun Kumar. The inquiry was held and Shri Karun Kumar came present and participated in the inquiry and submitted his written reply. The same was considered and the

employee was found guilty of misconduct. Due to unsatisfactory reply and explanation given, the authorities had no option but to remove the employee in view of serious misconduct. Shri Karun Kumar was employed on purely contract basis. Provisions of the ID Act do not apply in the present case so Shri Karun Kumar cannot claim any benefit under the ID Act. The appeal of Shri Karun Kumar was rejected as it lacked merits. He was serving purely on contract basis at consolidated salary of ₹ 13,500/- per month. He was removed from the services due to his misbehaviour/misconduct. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of Shri Karun Kumar be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

- (1) Whether Shri Karun Kumar is not a 'workman' as defined under the ID Act ? OPM
- (2) Whether the management is not an 'industry' as defined under the ID Act ? OPM
- (3) Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
- (4) Relief.

5. During the pendency of the present industrial dispute, none appeared on behalf of the workman as such the present industrial dispute is dismissed in default for want of prosecution. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

The 29th January, 2020.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 5th June, 2020

No. 13/1/9705-HII(2)-2020/7883.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 69/2017, dated 20.03.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

ASHA, W/O LATE SHRI RAJ KUMAR, R/O JUGGI No. 10, KHUDA LAHORA, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. REGIONAL COOPERATIVE MANAGEMENT INSTITUTE, SECTOR 32-C, CHANDIGARH
2. AMAN SECURITY & DETECTIVES, HOUSE NO. 3950, SECTOR 47-D, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

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<https://egazette.chd.gov.in>*

2. Case of the workman in brief is that she had worked with management No. 1 as Sweeper and she was engaged and given employment on contract basis by management No. 2, who supplies the manpower to various institutions and offices including management No. 1. She joined her services as Sweeper on 01.11.2009. Her last drawn salary was ₹ 8,000/- when she was terminated from her work. She had worked with management No.1 from 01.11.2009 to 25.10.2014 till management No. 2 had terminated her services without any fault of her and without any intimation and with illegal, unlawful and wrongful manner, without any charge sheet, inquiry, notice and without giving workman any compensation. The management did not mark the attendance of the workman in the attendance register and whenever she asked for marking her attendance in the register, the management makes excuse that she is getting the salary without any problem then there is no need of marking the attendance in the attendance register. The workman gave application before the Labour Inspector, Labour Department, Sector 30, Chandigarh for settling the dispute between the workman and management. The management had accepted to take her back on work. The workman went to office of management number of times in the past but the management linger on the matter on one pretext or other and asked her if she again went to the Labour Court then he will never consider her name for employment with him. The workman had worked for more than 240 days continuous service before illegal termination. No notice or pay in lieu of notice was paid to the workman and no retrenchment compensation was paid to the workman under Section 25-F of the ID Act. Juniors to the workman were retained in service and fresh hands were appointed after illegal termination of the workman. There is violation of principle of 'first come last go' laid down by Section 25-H of ID Act. The management with bad intention just to save them from the litigation and not give any compensation to the workman has taken her back on work for few days and then again terminated her service illegally and without any notice or compensation. Her husband had died and her family was totally dependent upon her income. Ultimately, it is prayed that the workman be reinstated into service with back wages and interest at the rate 18% per annum from the date of its due.

3. During the pendency of the present industrial dispute, learned representative for the workman made the statement that he did not want to pursue the claim against management No. 1. So *vide* order dated 27.10.2017 passed by the then Presiding Officer of this Tribunal/Court, management No. 1 i.e. Regional Co-operative Management Institute, Sector 32, Chandigarh was deleted from the array of the parties.

4. Management No. 2 contested the case of the workman and filed written statement that the workman was engaged by the management on 01.12.2013 and she left the job on 23.09.2014. The demand notice was served by the workman and the same was stood closed *vide* letter dated 29.10.2015 issued by the Conciliation Officer. She had not completed 240 days in the preceding year. She had worked for 21 days only in September 2014 and was paid an amount of ₹ 5,510/- after deducting the amount of PF and ESI and other legal deductions. She never worked with answering management from 01.11.2009 to 25.10.2014. The attendance was being marked by the Regional Co-operative Management Institute and the salary was being released by the institute for the days the employees had worked. The leaves of the employees were being conveyed to the management by the Institute. As the workman had left the services herself so question of terminating her services does not arise and there is no violation of Section 25-F and 25-H of the ID Act. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

5. The workman filed replication reiterating the averments of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

- (1) Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
- (2) Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, management No. 2 examined Shri Arun Kumar-Clerk, O/o Assistant Labour Commissioner, Union Territory Chandigarh as MW1, Shri O. P. Sharma-PA to Director, Regional Cooperative Institute, Sector 32, Chandigarh as MW2 and Shri J. S. Tanwar-Proprietor as MW3. Learned representative for management No. 2 closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 :

7. Onus to prove this issue was on the workman and to discharge the same learned representative for the workman examined the workman, who deposed that she worked with management No. 1 as Sweeper and she was engaged on contract by management No. 2 who supplies the manpower to management No. 1. She had joined her duties as Sweeper on 01.11.2009 and her last drawn salary is ₹ 8,000/-. She worked with management No. 1 from 01.11.2009 till 25.10.2014 when her services were terminated by management No. 2 without any charge sheet, inquiry, notice and compensation. She had worked for more than 240 days continuously before illegal termination. No notice or pay in lieu of notice was paid to the workman and no retrenchment compensation was paid to her.

8. Learned representative for the workman has argued that Regional Cooperative Management Institute as Sweeper on contract basis with management No. 2. The applicant joined her services on 01.11.2009 and her last drawn salary ₹ 8,000/- when she was terminated. She had worked with the Regional Cooperative Management Institute from 01.11.2009 to 25.10.2014. He further argued that the management did not mark her presence in the register. When she was illegally terminated by the management she was not given notice pay and retrenchment compensation and violated the provisions of Section 25-F of the ID Act. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, learned representative for management No. 2 examined Shri Arun Kumar-Clerk, office of the Assistant Labour Commissioner, Chandigarh as MW1, who proved the copy of demand notice raised by the workman Exhibit 'M1' and the failure report Exhibit 'M2'. Further the management examined Shri O. P. Sharma - PA to Director, Regional Cooperative Institute, Sector 32, Chandigarh as MW2, who deposed that he had not brought the summoned record as the record of outsource employees are maintained by the contractor himself. The management had employed outsource employee from the contractor namely M/s Aman Security vide letter dated 20.11.2013 and earlier to that the institute had no contract of employment with M/s Aman Security for this post. He proved the letter dated 20.11.2013 as Exhibit 'M3'.

Learned representative for management No. 2 also examined Shri J. S. Tanwar-Proprietor as MW3, who deposed that that the reference is liable to be dismissed ground of non-joinder of necessary party i.e. Regional Institute of Cooperative Management Institute. The Regional Institute of Cooperative Management approved the quotation for supply of workers vide letter dated 20.11.2013, copy of which is Exhibit 'M1'. The contract of supply of the labour commenced from 01.12.2013. The workman moved an application before the management on 17.11.2013 and got herself registered. Copy of application is Exhibit 'M2'. She was deployed as Sweeper with Regional Cooperative Institute on 01.12.2013 and he raised the bill from 01.12.2013 to 31.12.2013 and the workman left the job on 23.09.2014. Thereafter she served the demand notice and the demand was closed vide letter Dated 29.10.2015. He further deposed that she herself left the job without signing any reason. She had not completed 240 days in the preceding year. She had worked for 21 days only in September 2014 and was paid 5,510/- after deduction of the amount of PF and ESI. Copy of wages slip is Exhibit 'M3'. The workman had not worked with the management from 01.11.2009 to 25.10.2014. The services of the workman were not terminated by the management rather she had left the services herself.

10. Learned representative for management No. 2 has argued that the present reference is bad for non-joinder of necessary party i.e. Regional Institute of Cooperative Management. He argued that the services of the workman were never terminated rather she had left the services of her own. She had not completed 240 days of service in a preceding year. She had worked with the management from 01.12.2013 to 31.12.2013. He prayed for dismissal of the present industrial dispute.

11. After giving my careful consideration to the rival contentions of both the sides, I find that as per averment of the workman she worked with the Regional Cooperative Management Institute, Sector 32-C, Chandigarh as Sweeper on contract basis and deployed by the management i.e. M/s Aman Security. She stated that she joined the services as Sweeper on 01.11.2009. She had worked with Regional Cooperative Management

Institute from 01.11.2009 to 25.10.2014 till the management but during cross-examination she herself stated that she had worked with Aman Security & Detective for 6/7 months. No appointment letter has been given to her. No termination letter was given at the time of termination of her services. She admitted that it is correct that the Regional Co-operative Management was got deleted from the arrays of parties in the present case. Moreover, it is crystal clear from the file that the workman herself by not pursuing the present claim against the Regional Cooperative Management Institute, Sector 32-C, Chandigarh. So claim is bad for non-joinder of necessary party. Secondly no attendance register has been placed on record. No termination has been placed on record. It is admitted by the workman that no termination was given at the time of termination of her services. So the stand taken by the management that she herself left the job with the management is tenable. Hence, the management has not terminated the services of the workman then question of illegal termination does not arise. As per Exhibit 'M1' contract of supply of labour commenced on 01.12.2013. As per Exhibit 'M2' application moved by the workman to get herself registered. Exhibit 'M3' is copy of wages slips for the month of September 2014. As per the slip the workman had worked for 21 days in September 2014. Exhibit 'A3' is legal notice given to the management by the workman. Hence, in view of the above said discussion, the workman miserably failed to prove on record any attendance register, salary register and failed to prove that she had worked for 240 days with the management and further had not joined the necessary party i.e. management No.1. It is for the workman to prove that she had worked for more than 240 days with the management preceding her date of termination. In this regard reliance is placed on citation **Krishna Bhagya Jala Nigam Limited Versus Mohammed Rafi**, Civil Appeal No.2895 of 2009 decided by Hon'ble Supreme Court of India on 28.04.2009 wherein it is held as under :—

"3. For the view we are taking, it is not necessary to into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in **State of Gujarat v. Pratamsingh Narsinh Parmar** (2001)9 SCC 713. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order of record of appointment or engagement for this period was produced by the workman."

Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

12. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

The 20th March, 2020.

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 5th June, 2020

No. 13/1/9706-HII(2)-2020/7881.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 77/2017, dated 12.03.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

GAGANDEEP KAUR, W/O SHRI MANISH VERMA, R/O #154, WARD NO. 15, NEAR VODAFONE TOWER, KURALI, MOHALI, PUNJAB. (Workman)

AND

1. KESHAV SECURITY PRIVATE LIMITED THROUGH MANAGING DIRECTOR SHRI DEVENDRA KUMAR, OFFICE ADDRESS, SCO NO. 845, 1st FLOOR, NAC MANIMAJRA, UNION TERRITORY, CHANDIGARH-160 101.
2. GOVERNMENT MEDICAL COLLEGE & HOSPITAL, SECTOR 32, CHANDIGARH THROUGH ITS DIRECTOR (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that she joined the services on 28.11.2008 under the contract with M/s Good House Keeping Services and she was posted in MRD as Data Entry Operator. The contract period with M/s Good House Keeping came to an end on 30.09.2012 and all the employees of the working under M/s Good House Keeping Services merged under the new contractor M/s Keshav Security Service Private Limited i.e. management No.1. Her last drawn salary is ₹ 15,448/- for the month of March 2015. The official of management No.1 knowingly had not issued an appointment letter, attendance card, wages and leave cards during the service despite her several requests. The workman conceived pregnancy so she informed about her pregnancy in the month of December 2014 to management No.1 and asked for the maternity leave. Management No.1 gave assurance that she will get all the benefits in relation to maternity relief whenever she so required. When the workman was about 7th month pregnant in the month of March 2015 the Doctor advised her the bed rest so she approached management No.1 for the grant of maternity relief but they started delaying the grant of leave. On 7th March 2015 the workman approached management No.1 with written letter but the official of management No.1 denied to accept the letter and gave oral confirmation / assurance that "kindly go on leave and come after the delivery then we will give you all the benefits of the Maternity relief" but management No.1 did not gave any written confirmation or written letter for granting maternity leave and on 01.04.2015 she was completed to go on maternity leave without any written sanction. On 24.05.2015 the workman was blessed with a child and thereafter in August 2015, she approached management No.1 for joining but management told her to get the confirmation letter from the HOD of MRD of management No. 2 i.e. Government Medical College & Hospital, Sector 32, Chandigarh (hereinafter called 'GMCH') at where she was lastly employed. The workman again approached to the HOD of MRD of respondent No.2 and requested to give confirmation letter for joining and maternity benefits but management No.2 started delaying the matter. After four months when she did not get any confirmation letter she approached management No. 1 on 07.12.2015 for rejoining then they told her that her services were terminated/dismissed with effect from 01.04.2015. Her termination/dismissal had been made during the contract period which was valid up to 30.09.2015 just to deprive the workman from maternity benefits and to escape from liabilities. She was working approximately for last

eight years under the institution but management No.1 ever bothered to inquire about the workman absence from duty. Management No.1 did not send any show cause notice or any intimation letter to the workman regarding her absence from the duties. The services of the workman were dismissed / terminated without any cogent reason on 01.04.2015. The workman was deprived from the maternity benefit without any cogent reason or any justification and during pregnancy the workman was terminated / dismissed without giving any notice or letter. Due to managements' act & conduct, the workman filed a criminal complaint under Maternity Benefits Act against both the managements, which is pending in the Court of Shri Akshdeep Mahajan-CJM, Union Territory Chandigarh. When the workman summoned the record by which the services of the workman were terminated then official of management No. 2 brought a letter dated 15.05.2015 under which GMCH has asked to replace the services of the workman by one of Deepak Gupta and accordingly management No. 2 had employed said person on the workman place and her services has been terminated without any notice. When the workman applied for the ESI benefits in the ESI department then official of the ESI asked for signature of the employer i.e. management No.1. The official of management No.1 flatly refused to sign and stamp the form. Thereafter the workman returned back to ESI office and told to concerned officer then Shri Balwinder Singh - Branch Manager went to management No.1 office and asked to produce the service of the workman but management No.1 did not produce any record. The workman got the documents showing the replacement of her services on 05.10.2016 when the official of management No.2 presented letter dated 15.05.2015 in the Court. Management No.1 had not paid or offered notice pay in lieu of notice or compensation to the workman. There is serious violation of Section 25-F, 25-G & 25-H of the ID Act. Ultimately, it is prayed that order of discharge / dismissal of the workman dated 01.04.2015 be set aside and management No. 1 be directed to reinstate the workman with back wages and other attendant benefits.

3. Management No.1 contested the case of the workman and filed written statement that at the time of taking over the contract by the answering management, the workman was already working in the GMCH, Chandigarh i.e. under the previous service provider and no appointment letter was issued by the answering management to the workman. The workman never approached the answering management claiming maternity relief. The workman is registered under ESI scheme and is aware to claim all types of relief from the concerned department. The workman had not given any information regarding her pregnancy to the answering management so question of grant of maternity leave does not arise. The maternity leave is granted by the ESIC Department. The workman neither turned up for joining after delivery nor gave any such information. The workman neither approached the answering management for rejoining nor answering management terminated her services. Her services were discontinued by management No.1 and her substitute was employed by management No.1 and her substitute was employed directly by management No.1 as is evident from letter dated 15.05.2015. The question of issuing any termination letter by management No.2 does not arise as the workman herself started absenting from her duties with effect from 01.04.2015. The answering management had not violated any provisions of the ID Act. The complaint filed by the workman was satisfactorily replied and required record had already been produced in the District Court, Chandigarh. The workman neither approached the answering management nor Shri Balwinder Singh - Branch Manager visited the office of the answering management for signing documents for claiming ESI benefits. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman *qua* answering management be dismissed.

4. Management No.2 contested the case of the workman and filed written statement that the workman was never appointed / engaged by answering management. She was deputed by the service provider through outsource, who was providing these services in GMCH. As per clause 14 of the service agreement, the persons so deployed by the service provider for the execution of this agreement shall be his employees for all intents and purposes and in no case, there shall be any relationship of employer and employees between the said persons and GMCH, either implicitly or explicitly. The answering management had never directed the contractor to terminate the services of the workman rather management No.1 was requested *vide* letter dated 19.02.2015 to assign the general duty to the workman in Medical Record Department till the person is out of medical situation. The Head, MRD *vide* letter dated 17.03.2015 informed the Additional Director (Admn.) that the working of the workman was highly unsatisfactory and rather than being of any help to the department,

she was proving to be a liability. She made so many mistakes while making OPD cards that it requires a massive effort to correct the same and cause harassment to the patients and unnecessary increase of workload of Medical Record Department. So *vide* letter dated 31.03.2015 management No.1 was conveyed that the services of the workman may be used elsewhere and her substitute be provided out of the panel already sent by the firm for the post of Data Entry Operator, which was under consideration. Ultimately, it is prayed that the claim of the workman *qua* answering management be dismissed.

5. The workman filed replication reiterating the averments of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

- (1) Whether the services of the workman were terminated illegally by the management, if so to what effect and to what relief she is entitled to, if any ? OPW
- (2) Relief.

6. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, management No.2 examined Smt. Renu Bala - Senior Assistant as MW1 and management No.1 examined Col. S. P. Puri (Retd.) - Regional Director as MW2. Learned representative for management No.1 and learned Law Officer for management No.2 closed the evidence.

7. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 :

8. Onus to prove this issue was on the workman and to discharge the same learned representative for the workman has examined the workman as AW1, who deposed that she joined the services on 28.11.2008 under contract with M/s Good House Keeping Services and was posted in MRD as Data Entry Operator. The contract period of M/s Good House Keeping Services came to an end on 30.09.2012 as such all the employees of working under M/s Good House Keeping Services merged under the new contractor M/s Keshav Security Services Private Limited i.e. management No. 1. She further deposed that she conceived pregnancy so she informed about the same in the month of December 2014 to management No.1 and asked for maternity leave whenever she required on the prescription of the Doctor. Management No.1 gave assurance that she will get all the benefits in relation to maternity relief whenever she so required. She deposed that when she was about 7th month pregnant in the month of March 2015, the Doctor advised her for the bed rest so he approached management No.1 for grant of maternity relief but they started delaying the grant of leave. On 7th March 2015 she approached management No.1 with written letter but the official of management No.1 denied to accept the letter and gave oral confirmation and asked to go on leave and came after the delivery then she will be given all benefits of maternity relief. On 01.04.2015 she was compelled to go on maternity leave without any written sanctioned leave and on 24.05.2015 she was blessed with a child. In August 2015 when he approached management No.1 for joining then they told to get the confirmation letter from HOD of MRD of management No. 2. Instead of giving benefits of maternity relief and rejoining at service, the HOD of MRD of management No. 2 started delaying the confirmation letter for rejoining and after four months when she again approached management No.1 on 7th December 2015 for rejoining they told her that her services have been terminated/dismissed with effect from 01.04.2015. Management No. 1 did not send any show cause notice or any intimation letter to her regarding her absence from duties. She further deposed that due to act & conduct of the management, she filed a criminal complaint under Maternity Benefits Act against both the managements, which is pending in the Court of Shri Akshdeep Mahajan-Chief Judicial Magistrate, Union Territory, Chandigarh wherein management No. 2 brought letter dated 15.05.2015 under which GMCH has asked to replace the services of herself by one Deepak Gupta and accordingly management No. 2 had employed said person on her place. She deposed that when she applied for ESI benefits in the ESI Department then official of the ESI asked for signature of the employer and when she approached management No. 1 for the same, the official

of management No.1 flatly refused to sign and stamp the form. Upon which Shri Balwinder Singh - Branch Manager went to management No.1 office and asked to produce the service record of herself but management No. 1 did not produce any record. She was not paid or offered notice to pay in lieu of notice or compensation. Job of herself exists as it is till date and the same has been assigned to other recommended employee. There is serious violation of Section 25-F, 25-G & 25-H of the ID Act.

9. Learned representative for the workman has argued that the workman was working with GMCH through outsource agency since 2008 and in 2014 she conceived pregnancy so asked for benefits of maternity relief upon which management No.1 orally confirmed the workman to go on leave but did not give any written confirmation. She was compelled to go on maternity leave without any written sanction on 01.04.2015. After giving birth to child and availing maternity leave when she approached management No.1 to join her duties she was asked to get confirmation letter from the GMCH. The HOD of MRD of management No.2 delayed the confirmation letter for rejoining so she approached management No.1 for rejoining and she was told that her services were terminated with effect from 01.04.2015. He argued that no notice was issued, no inquiry was held and no retrenchment compensation was paid to the workman before terminating her services. The management had violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. He prayed for reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, learned representative for management No.1 examined Col. S. P. Puri (Retd.) - Regional Director as MW2, who deposed that he is service provider to various Government as well as other organisation as per their requirement. At the time of taking over the contract by him, the workman was already working in the GMCH, Chandigarh i.e. management No.2 under the previous service provider and no appointment was issued by him to the workman. The workman never approached him for rejoining nor he terminated her services. Her services were discontinued by management No.2 and her substitute was employed directly by management No.2 as is evident from letter dated 15.05.2015. The workman never approached him claiming maternity relief. The workman herself started absenting from her duties with effect from 01.04.2015.

11. Learned Law Officer for management No.2 has examined Smt. Renu - Senior Assistant as MW1, who deposed that management No.2 never deployed the workman nor any appointment letter was issued to the workman. No wages were paid to the workman by management No.2 and her services were not terminated by office management No. 2. The workman is not entitled to claim any relief *qua* management No.2 in absence of any relationship of workman and management between the workman and management No.2. She was deputed by the services provider through outsource, who was providing the services in GMCH. As per clause 14 of the service agreement, the persons so deployed by the service provider for the execution of this agreement shall be his employees for all intents and purposes and in no case, there shall be any relationship of employer and employee between the said persons and GMCH. The workman was not an employee of GMCH rather she was deputed through outsource service provider so maternity leave, joining/rejoining etc., if any, was to be considered by the service provider management No.1. Management No.2 never directed the contractor to terminate the services of the workman rather management No.1 was requested *vide* letter dated 19.02.2015 to assign the general duty to the workman in Medical Record Department till the person is out of medical situation. It was further submitted that Head, MRD *vide* letter dated 17.03.2015 informed the Additional Director (Admn.) that the working of the workman was highly unsatisfactory and rather than being of any help to the department, she was proving to be a liability. She made so many mistakes while making OPD cards that it required a massive effort to correct the same and the same caused harassment to the patients and unnecessary increases the workload of Medical Record Department. *Vide* letter dated 31.03.2015 management No.1 was conveyed that the services of the workman be used elsewhere and her substitute be provided out of the panel already sent by the firm.

12. Learned representative for management No.1 has argued that no appointment letter was issued by management No.1 to the workman rather she was already working with GMCH under previous service provider at the time taking over the contract by management No.1. Question of issuing any termination letter does not arise as the workman herself started absenting from duties with effect from 01.04.2015. The workman

never gave any information regarding her pregnancy to management No. 1. He further argued that maternity relief, if any, including maternity leaves are given by ESIC Department. The services of the workman were discontinued by management No.2 and her substitute was employed directly by management No.2. He prayed for dismissal of the claim of the workman *qua* management No. 1.

13. Learned Law Officer for management No.2 has argued that the workman is not entitled to claim any relief *qua* management No.2 in absence of any relationship of workman and management between the workman and management No.2. She was deputed by the services provider through outsource, who was providing the services in GMCH. As per clause 14 of the service agreement, the persons so deployed by the service provider for the execution of this agreement shall be his employees for all intents and purposes and in no case, there shall be any relationship of employer and employee between the said persons and GMCH. The workman was not an employee of GMCH rather she was deputed through outsource service provider so maternity leave, joining / rejoining etc., if any, was to be considered by the service provider management No.1. He further argued that management No. 2 never directed the contractor to terminate the services of the workman rather management No.1 was requested *vide* letter dated 19.02.2015 to assign the general duty to the workman in Medical Record Department till the person is out of medical situation. The Head, MRD informed the Additional Director (Admn.) that the working of the workman was highly unsatisfactory and rather than being of any help to the department, she was proving to be a liability. She made so many mistakes while making OPD cards that it required a massive effort to correct the same and the same caused harassment to the patients and unnecessary increases the workload of Medical Record Department accordingly, management No.1 was conveyed that the services of the workman be used elsewhere and her substitute be provided out of the panel already sent by the firm. He prayed for dismissal of the present industrial dispute *qua* management No.2.

14. I have considered the submissions of rival contentions of both the sides. The main contention of the workman is that she was pregnant and was forced to go on maternity leave on 01.04.2015 and after availing the same when she approached the management on 19.12.2015 she was told that her services have been terminated on 01.04.2015. In order to prove her pregnancy and delivery of child she had placed reliance on document Exhibit 'W3' & 'W4' i.e. letter to management No. 1 & 2 informing about her pregnancy and remaining absent from work from 01.04.2015.

15. So far as the claim of the workman with regard to maternity relief is concerned, it is admitted case of the workman that she was registered under ESI scheme and her case is pending in the District Court, Sector 43, Chandigarh pertaining to her claim for maternity.

16. It is the stand of management No.1 that the workman was already working with GMCH i.e. management No.2 whereas it is the stand of management No.2 that they never employed the workman and no appointment letter was issued to the workman by them. From the documentary evidence led, it is crystal clear that the workman was deployed with GMCH by outsource agency. Exhibit 'W1' is the certificate dated 04.12.2012 issued by M/s Good House Keeping certifying that the workman had worked with them from 28.11.2008 to 30.09.2012 and she was deputed to work at GMCH. Exhibit 'WX1' is letter dated 19.12.2015 *vide* which management No.2 on the request of the workman wrote to management No.1 for assigning the general duties to the workman till she is out of medical situation. Exhibit 'WX2' is complaint dated 17.03.2015 from the Head, MRD, GMCH, to Additional Director (Admn.), GMCH regarding work & conduct of the workman. Exhibit 'WX3' is letter dated 31.03.2015 written to management No.1 by management No.2 for replacement of services of the workman with substitute out of panel already sent by management No. 1. Exhibit 'WX4' is letter dated 15.05.2015 management No. 1 was allowed to deploy Shri Deepak Gupta on contract basis through outsource, from the waiting panel already available. The workman is alleging that she was orally denied to join duties whereas from the above mentioned exhibits, relied upon by the workman herself, it is crystal clear that her services were substituted on the ground of work & conduct. Hence, there is no termination. The workman has failed to prove that his services were terminated by the management. This issue is decided against the workman and in favour of the management.

Relief :

17. In the light of findings on the issue above, this industrial disputes is declined. Appropriate Government be informed. File be consigned to the record room.

The 12th March, 2020.

(Sd.) ,
(ANSHUL BERRY),

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

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